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TECHNOLOGY & INNOVATION LAW GROUP, PC
ATTN: 101
19200 STEVENS CREEK BLVD., SUITE 240
CUPERTINO, CA 95014

EXAMINER	
REFAI, RAMSEY	

ART UNIT	PAPER NUMBER
3627	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/687,534	KONDRK ET AL.	
	Examiner	Art Unit	
	Ramsey Refai	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 December 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-46* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-46* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Responsive to Amendment filed December 12, 2008. Claims 1, 6, 11, and 31-46 have been amended. Withdrawn claims 47-49 have been canceled. Claims 1-46 remain pending.

Response to Arguments

1. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Specification

2. The Amendments to paragraph [0059] have not been entered. The deletion of matter from the original specification constitutes new matter. The amendments to claims 31-46 are sufficient to overcome the previous 101 rejections. No amendments to the specification are needed.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 6 and 11 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 6, the term “the audio tracks" lacks proper antecedent basis. Claim 11 is indefinite because the claim attempts to further limit one of the media items to a video track however, claim 1 has defined all the media items as having an audio track.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-6, 11-13, 16, 18, 21, 23-29, 31-34, 36, 39-41, and 44-46 are rejected under 35 U.S.C. 102(e) as being anticipated by Galuten et al (US Patent 7,209,892).

7. As per claim 1, Galuten et al teach a method for submission of a media collection to a media distribution site, said method comprising:

obtaining metadata for the media collection **(see at least column 3, lines 8-15, 41-50; metadata is provided)**

identifying media content for a plurality of media items to be included in the media collection, the media content being imported from a media source, each of the media items including a different audio track **(see at least column 3, lines 41-50; album including a plurality of songs to form a collection/album)**;

converting the identified media content for the plurality of media items into compressed media files, said converting encodes the media content for each of the media items into a compressed audio format **(see at least column 3, lines 50-52; every content element is compressed)**;

obtaining metadata for the identified media content **(see at least column 3, lines 8-15, 41-50)**;

forming an electronic package of the media collection **(see at least column 3, lines 41-50; album including a plurality of songs to form a collection/album)**, the electronic package including at least the compressed media files and the metadata associated with the media collection and the identified media content **(see at least column 3, lines 50-52; every content element is compressed)**; and

thereafter electronically transmitting the electronic package to the media distribution site, thereby submitting the media collection to the media distribution site for subsequent distribution **(see at least column 3, lines 55-61, column 6, lines 40-66, abstract, production system receives content and provides mechanism for distribution).**

8. As per claim 2, Galuten et al teach wherein the metadata for the media collection obtained includes at least descriptive media collection information **(see at least column 3, lines 8-11).**

9. As per claim 3, Galuten et al teach wherein the descriptive media collection information includes, for the media collection, at least a title, an artist, a genre, a label name, copyright information, release information, and a numerical identifier **(see at least column 3, lines 8-11, 41-46).**

10. As per claim 4, Galuten et al teach wherein the descriptive media collection information further includes an image to be used as artwork for the media collection **(see at least column 3, lines 8-11, 41-46)**.

11. As per claim 5, Galuten et al teach wherein the metadata for the media collection is entered by a user **(see at least column 3, line 11-14)**

12. As per claim 6, Galuten et al teach wherein the audio tracks pertain to songs, and wherein said converting encodes the media content for each of the songs into a compressed audio format **(see at least column 3, lines 41-52).**

13. As per claim 11, Galuten et al teach wherein at least one of the media items is a video track **(see at least column 3, lines 10-11)**.

14. As per claim 12, Galuten et al teach wherein the metadata for the identified media content includes at least descriptive media item information for each of the media items of the identified media content **(see at least column 3, lines 8-11, 41-46)**.

15. As per claim 13, Galuten et al teach wherein the descriptive media item information includes, for the corresponding media item, at least a title, an artist, a genre, track number, a label name, copyright information, and a numerical identifier **(see at least column 3, lines 8-11, 41-46)**.

16. As per claim 16, Galuten et al teach wherein the metadata for the identified media content is entered by a user **(see at least column 3, line 11-14)**.

17. As per claim 18, Galuten et al teach wherein a second portion of the metadata for the identified media content is entered by a user **(see at least column 3, lines 8-11, 41-46)**.

18. As per claim 21, Galuten et al teach wherein the electronic package of the media collection comprises a folder of files, one of the files is a markup language file containing at least the metadata; another of the files is an image file for artwork associated with the media collection, and a plurality of other of the files are compressed audio files **(see at least column 29, lines 50-67, column 31, lines 32-51, abstract)**.

19. As per claim 23, Galuten et al teach wherein said transmitting operates to electronically transmit the electronic package to the media distribution site over the Internet **(see at least abstract)** using encryption **(see at least column 3, line 51)**.

20. As per claim 24, Galuten et al teach wherein said method further comprises: receiving the electronic package at the media distribution site; parsing the electronic package to retrieve components from the electronic package, the components including at least the identified media content in the compressed media format, the metadata for the media collection and the metadata for the at least one media item; and storing the components into a media distribution database **(see at least column 3, lines 40-61, column 30, lines 10-40)**.

21. As per claim 25, Galuten et al teach wherein said method further comprises: rendering the media collection and the media items thereof available for online purchase at the media distribution site **(see at least column 7, lines 1-4, column 8, lines 39-53, 66-67)**.

22. As per claim 26, Galuten et al teach wherein said method further comprises: rendering the media collection and the media items thereof available for online purchase at the media distribution site **(see at least column 7, lines 1-4, column 8, lines 39-53, 66-67)**.

23. As per claim 27, Galuten et al teach wherein said method is performed by an application program **(see column 6, lines 41-66).**

24. As per claim 28, Galuten et al teach wherein, when the application program performs said obtaining of the metadata for the media collection and said obtaining of the metadata for the identified media content, a user interacts with the application program **(see column 6, lines 41-66)**.

25. As per claim 29, Galuten et al teach wherein the user is a representative for an independent recording label, and wherein said application program facilitates the independent recording label in submission of the media collection to the media distribution site for subsequent online distribution **(see at least column 3, line 14)**.

26. As per claim 39, Galuten et al teach wherein the media distribution site is an online media distribution site **(see at least abstract).**

27. Claims 31-34, 36, 40-41, and 44-46 contain similar limitations as claims 1, 5-7, 12, 21, 23, 25 and 29 and are therefore rejected under the same rationale.

Claim Rejections - 35 USC § 103

28. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject

> matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

29. Claims 14, 17, 19, 35, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galuten et al.

30. As per claims 14, 19, and 37 Galuten et al fail to explicitly teach wherein *the metadata for the identified media content includes an indication as to whether the identified media content is available for sale*. However, it would have been obvious to one of ordinary skill in the art to modify the teaching of Galuten et al to include such feature because doing so would allow for an artist to authorize the sale of the content by entering the information as descriptive data.

31. As per claim 17, Galuten et al fail to explicitly teach wherein *a first portion of the metadata for the identified media content is obtained from the metadata for the media collection*. However, it would have been obvious to one of ordinary skill in the art to include this feature in Galuten et al because doing so would create a way to associate the media with the media file in Galuten et al by associating the metadata such as including the title of the media file in the title of the media.

32. As per claim 35, Galuten et al fail to teach wherein *the media source is a compact disc*. However, it would have been obvious to one of ordinary skill in the art to include this feature in Galuten et al because doing so would allow an artist to upload his music to the content manager directly from a compact disc.

33. Claims 7-10, 22, 30, 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galuten et al in view of "Official Notice".

34. As per claims 7-10, Galuten et al fails to explicitly teach wherein the compressed audio format is MPEG based, MPEG4 based, Advanced Audio Coding (AAC), MP4, M4 or M4a. However, "Official Notice" is taken that the concept and advantages of such formats are well known in the art. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to include any one of these audio formats in Galuten et al because doing so would allow for the media files to be efficiently communicated via the Internet **(see paragraph [0005] of Applicant's specification).**

The Applicant has not adequately traversed the Official Notice taken in the previous action. " *To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.*" MPEP 2144.03c. **The common knowledge or well-known in the art statement is taken to be admitted prior art because the traverse was inadequate. MPEP 2144.03c**

35. As per claim 22, Galuten et al teach wherein the markup language file is an XML file **(see at least column 29, line 61)**, but fail to *explicitly* teach wherein the image file is a *JPEG file*, and the compressed audio files are *MPEG4 based*. However, "Official Notice" is taken that both the concept and advantage of a JPEG file and MPEG4 are well known in the art as evidenced by Marsh **(US 7,073,193, see at least column 6, lines 35-48, column 51, lines 25-37)** and the Applicant's specification (**see paragraph [0005]).** It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to include these features in

Galuten et al because doing so would allow for the media file to be efficiently communicated via the Internet.

The Applicant has not adequately traversed the Official Notice taken in the previous action. " *To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.*" MPEP 2144.03c. **The common knowledge or well-known in the art statement is taken to be admitted prior art because the traverse was inadequate. MPEP 2144.03c**

36. Claim 42 contains similar limitations as claim 22 and therefore is rejected under the same rationale.

37. As per claim 30, Galuten et al fail to teach determining whether the electronic package should be transmitted or queued; queuing the electronic package when said determining determines that the electronic package should be queued; and transmitting the electronic package to the media distribution site when said determining determines that the electronic package should be transmitted. However, "Official Notice" is taken that the concept and advantage of determining whether to transmit or queue data and queuing a transmission until transmission is possible is well known in the art as evidenced by **Tang et al (US 2003/0074465)** and **Blackwell et al (US 6,085,253).** It would have been obvious to one of ordinary skill in the art to include this feature in Galuten et al because doing so would allow data file to be queued when the server or the bandwidth is unavailable for uploading the data file. The Applicant has not adequately traversed the Official Notice taken in the previous action. " *To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be*

common knowledge or well-known in the art." MPEP 2144.03c. **The common knowledge or well-known in the art statement is taken to be admitted prior art because the traverse was inadequate. MPEP 2144.03c**

38. Claim 43 contains similar limitations as claim 30 and therefore is rejected under the same rationale.

39. Claims 15, 20, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galuten et al in view of Marsh (US 7,073,193).

40. As per claim 15, Galuten et al fail to *explicitly* teach wherein the descriptive media item information further includes *a parental advisory*. However, in the same field of endeavor, Marsh teaches where the metadata for media content such as songs **(column 2, lines 30-32)** can be censor parental ratings **(see column 84, lines 11-20, fig 22).** It would have been obvious to one of ordinary skill in the art to combine the features of Marsh with Galuten et al because doing so would notify customers of the nature of the media content.

41. As per claim 20, Galuten et al fail to explicitly teach *wherein the metadata for the imported media content includes a parental advisory*. However, in the same field of endeavor, Marsh teaches that metadata for media content such as songs **(column 2, lines 30-32)** can include censor parental ratings **(see column 84, lines 11-20, fig 22).** It would have been obvious to one of ordinary skill in the art to combine the features of Marsh with Galuten et al because doing so would notify customers of the nature of the media content.

42. As per claim 38, Galuten et al fail to *explicitly* teach wherein the metadata for the identified media content includes *a parental advisory indication*. However, in the same field of endeavor, Marsh teaches that metadata for media content such as songs **(column 2, lines 30-32)** can include censor parental ratings **(see column 84, lines 11-20, fig 22).** It would have been obvious to one of ordinary skill in the art to combine the features of Marsh with Galuten et al because doing so would notify customers of the nature of the media content.

Conclusion

The prior art made of record and not relied upon, which is considered pertinent to applicant's disclosure, are cited in the Notice of Reference Cited form (PTO-892).

Examiner's Note: The Examiner has cited specific citations in the reference(s) as applied to the claim(s) above for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the Applicant, in preparing their response, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramsey Refai whose telephone number is (571) 272-3975. The examiner can normally be reached on M-F 8:30 - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan Zeender can be reached on (571) 272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ramsey Refai
February 28, 2009
/Ramsey Refai/
Examiner, Art Unit 3627